

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600
Facsimile: 801 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

**JOHN BOYD TENNEY;
JAMES BRUCE KLINGBIEL; and
MICHAEL ANTHONY ESPINOZA**

Respondents.

**EMERGENCY ORDER TO CEASE AND
DESIST AND ORDER TO SHOW
CAUSE**

**Docket No. SD-02-0106
Docket No. SD-02-0107
Docket No. SD-02-0108**

This matter comes before the Director (“Director”) of the Utah Division of Securities (“the Division”) upon allegations of Division staff that John Boyd Tenney, James Bruce Klingbiel, and Michael Anthony Espinoza (collectively “Respondents”) have engaged in acts and practices that constitute violations of the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (“the Act”). Having reviewed the relevant facts discovered in the course of the Division staff’s investigation of this matter, the Director finds and concludes that Respondents’ conduct presents an immediate and significant danger to the public welfare, and that the threat requires

immediate action by the Division. The Director issues this Emergency Order in accordance with the provisions of Utah Code Ann. § 63-46b-20. The Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20 (1) of the Act.

FINDINGS

In support of this Order, the Division's staff has received evidence establishing the following facts:

1. John Boyd Tenney ("Tenney") is an individual whose last known address is 3641 Golden Oaks Drive, Salt Lake City, Utah 84121.
2. James Bruce Klingbiel ("Klingbiel") is an individual whose last known address is 6912 West 4065 South, West Valley City, Utah 84120.
3. Michael Anthony Espinoza ("Espinoza") is an individual whose last known address is 658 East 300 West, Spanish Fork, Utah 84660.
4. Echo Tek is a DBA of Aspirit Corporation that maintain its principal place of business at 3648 West 2100 South, Salt Lake City, Utah 84120. Aspirit Corporation is a Utah Corporation that was registered with the Division of Corporations from March 31, 2000 until February 13, 2002. The filing became delinquent on Mary 31, 2001 for failure to file a renewal. The current status of the Aspirit Corporation is "Expired."

5. Records of the National Association of Securities Dealers (NASD) Central Registration Depository (CRD) and the Division indicate that Tenney, Klingbiel and Espinoza have never been licensed as broker-dealers or agents in the state of Utah.
6. The securities of Echo Tek are not registered with the Division.
7. Records of state and federal courts reveal that Tenney has over 20 judgments from 1986 to 2001 totaling over \$850,000 including a 1992 state felony case in which Tenney was found guilty of 27 felony counts of securities violations.
8. Records of state and federal courts reveal that Espinoza has over 18 judgments from 1983 to 2001 totaling over \$86,000.
9. Records of state and federal courts reveal Klingbiel has one civil judgment totaling \$299.04.
10. In approximately March 2001, Respondents began soliciting Utah residents to invest in their start-up company, Echo Tek. At least 10 individuals invested \$850,000.
11. Respondents offered potential investors promissory notes and factoring agreements. These investments are securities as defined in §61-1-13 (24)(a) of the Act.
12. Respondents represented that the money would be used for payroll, business expenses and general expenses. In fact, bank records reveal that the investments were used for a variety of personal expenses and to pay off previous investors.

13. Respondents offered and paid commissions in the form of referral fees to investors and employees who were willing to introduce potential investors to Echo Tek.
14. Respondents Tenney and Espinoza told an investor that they were being paid around \$700 a month and Klingbiel said he was not being paid anything at all from the Echo Tek funds. These representations were not true.
15. Respondents told investors that Echo Tek had a contract with AT & T for sales and service work and that it took AT & T approximately 6 to 8 weeks to pay Echo Tek after they received their invoices.
16. Respondents told investors that they could purchase Echo Tek invoices at an 11–17.16 percent markdown and would be paid face value immediately when Echo Tek was paid by AT & T.
17. When an investor questioned why he had not been paid for his factoring agreement, Respondents said they were having billing problems with AT & T and asked the investor to sign an amended factoring agreement.
18. In connection with the offer and sale of securities in Echo Tek, Respondents made the following misrepresentations:
 - a. Investors would double their money in one year without any risk;
 - b. Investor funds would be used solely for the purpose of Echo Tek;

- c. Investors would have first position to be paid out of Echo Tek's accounts receivables;
- d. Investor funds would be fully secured by Linknet stock;
- e. Investor's would receive an undivided 2 percent interest in Echo Tek common stock, which would entitle them to dividends, distributions, valuations, and any other benefits which might accrue to the stockholders of Echo Tek;
- f. If Echo Tek violated any part of its agreement, investors could terminate the agreement immediately. In fact, although investors have demanded return of their money, they have been unable to recover their principal;
- g. Echo Tek was a "cash cow" and would have more than enough money to pay investors in full, with interest, in 30 days;
- h. Investors would receive 18 percent per annum on their investments;
- i. Echo Tek's accounts receivables were not pledged or promised to anyone else so investor would receive 100 percent of accounts receivables billed to AT & T until paid in full;
- j. An investor would have the right to fund all Echo Tek's invoices for two years and the opportunity to purchase 10 percent of Echo Tek for \$150,000 as warrants for a four-year period; and
- k. Investors could be paid directly from AT & T.

19. In connection with the offer and sale of securities in Echo Tek, Respondents omitted the following material facts:
- a. Investor funds were being used for Respondents' personal expenses;
 - b. Investor funds were not fully secured by Linknet stock;
 - c. Investor funds were being used to pay off other investors;
 - d. Investor was not in first position to be paid out of Echo Tek's accounts receivable;
 - e. The security was not registered nor exempt from registration;
 - f. Respondents were unlicensed broker-dealers or agents;
 - g. Company assets and debts;
 - h. Experience of the officers or directors;
 - i. Number of investors or performance to previous investors;
 - j. Lawsuits, judgments, tax liens, debts, bankruptcies, or any action taken against seller or others involved with the investment.

CONCLUSIONS OF LAW

20. Section 61-1-1 of the Act states:

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly to:
1) employ any device, scheme, or artifice to defraud;
2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

21. Respondents' omissions and misrepresentations, as state above, violate § 61-1-1 of the Act.

22. Section 61-1-7 of the Act states:

It is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter or the securities or transaction is exempted under Section 61-1-14, or the security is a federal covered security for which a notice filing has been made pursuant to the provisions of Section 61-1-15.5.

23. The securities of Echo Tek were not registered, no exemption has been filed with the Division and no notice filing has been made. In addition, Echo Tek does not appear to qualify for any self-executing exemptions. Accordingly, the securities were offered and sold in violation of §61-1-7 of the Act.

24. Section 61-1-3(1) of the Act states:

It is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.

25. Section 61-1-13(3) of the Act defines broker-dealer as:

Any person engaged in the business of effecting transactions in securities for the account of others or for his own account.

26. Section 61-1-13(2) of the Act defines agent as:

Any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities in this state.

27. Respondents acted and continue to act as an agents of Echo Tek (an issuer) in effecting and attempting to effect the sale of securities in Echo Tek. Accordingly, Respondents are in violation of the licensing provisions of §61-1-3(1) of the Act.
28. Section 61-1-3(2)(a) of the Act further prohibits any broker-dealer or issuer from employing or engaging an agent unless the agent is licensed.
29. Respondents offered some of their investors a commission, in the form of a referral fee, for referring investors to Echo Tek.
30. Payment of commissions to individuals for effecting or attempting to effect the purchase or sale of securities is in violation of §61-1-3(2)(a) of the Act.
31. Respondents continue to offer and sell stock in Echo Tek.

EMERGENCY ORDER

In light of the foregoing, and in order to prevent or avoid danger to the public welfare, it is hereby ORDERED in accordance with Utah Code Ann. § 63-46b-20 that:

1. Respondents, together with their employees, agents, affiliates, assignees, successors, and associated entities, shall immediately CEASE AND DESIST from offering or selling securities in or from this State, and from directly or

indirectly aiding or assisting other individuals or entities from offering or selling investment interests in securities in this State.

2. Respondents, together with their employees, agents, affiliates, assignees, successors, and associated entities, shall immediately CEASE AND DESIST from soliciting finders to promote the investments; and
3. Respondent, together with their employees, agents, affiliates, assignees, successors, and associated entities, shall immediately CEASE AND DESIST from any and all other or further violations of the Act.

Respondents are advised that, pursuant to Utah Code Ann. § 61-1-21(1), any violation of this ORDER is punishable as a third-degree felony.


ORDER TO SHOW CAUSE

The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63-46b-4 and 63-46b-6 through -10, and held before the Utah Division of Securities. The hearing will occur at the date, time and place set forth in the attached Notice of Agency Action. If Respondents fail to appear at the hearing, this Order to Cease and Desist may become permanent and a fine imposed by default against Respondents, as provided by Utah Code Ann. § 63-46b-11. At the hearing, Respondents may show cause, if any they have:

1. Why Respondents should not be ordered permanently to cease and desist from engaging in any further conduct in violation of Utah Code Ann. §§ 61-1-1, 6-1-3, 61-1-7 or any other section of the Act; and

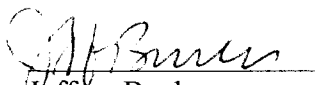
2. Why Respondents should not be ordered to pay fines to the Division in an amount to be determined at the hearing.

DATED this 17 day of July, 2002.



S. Anthony Taggart
Director

Approved:



Jeffrey Buckner
Assistant Attorney General

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
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**JOHN BOYD TENNEY;
JAMES BRUCE KLINGBIEL; and
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Respondents.

NOTICE OF AGENCY ACTION

**Docket # SD-02-0106
Docket # SD-02-0107
Docket # SD-02-0108**

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of mailing of the Emergency Order to Cease and Desist and Order to Show Cause. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. § 63-46B-3 through -5, and Utah Code Ann. § 63-46b-20. The facts on which this action is based are set forth in the foregoing Emergency Order to Cease and Desist.

Within thirty (30) days of the date of this notice, you are required to file a written response with the Division. The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Emergency Order to Cease and Desist and Order to Show Cause.

You must attend a hearing that will occur at **160 East 300 South, 2nd Floor, Room 205, Salt Lake City, Utah at 9:00 a.m.; on August 19, 2002.**

If you fail to file a written response, as set forth herein, or fail to appear at the hearing, you will be held in default and an Order to Cease and Desist will enter and a fine may be imposed against you in accordance with Utah Code Ann. §63-46b-11.

The presiding officer in this case is S. Anthony Taggart, Director, Division of Securities, 160 East 300 South, Box 146760, Salt Lake City, Utah 84114-6760, telephone (801) 530-6600. The Administrative Law Judge will be J. Steven Eklund, Utah Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, telephone (801) 530-6648. At such hearing, the Division will be represented by the Utah Attorney General's Office, Box 140872, 160 East 300 South, Salt Lake City, Utah, 84114, telephone (801) 366-0310. At the hearing, you may appear and be heard and present evidence on your behalf.

You may attempt to negotiate a settlement of the matter without proceeding to the hearing. Should you so desire, please contact the Utah Attorney General's Office. Questions regarding the Petition and Notice of Agency Action may be directed to Jeff Buckner, Assistant Attorney General, 160 E. 300 South, PO Box 140872, Salt Lake City, Utah, 84114-0872, telephone (801) 366-0310.

DATED this _____ day of July, 2002.

S. Anthony Taggart
Director, Division of Securities
Utah Department of Commerce

CERTIFICATE OF SERVICE

I certify that on the 11th day July, 2002, I mailed, by certified mail, a true and correct copy of the Emergency Order to Cease and Desist and Order to Show Cause and the Notice of Agency Action to the following Respondents:

John Boyd Tenney
3641 Golden Oaks Drive
Salt Lake City, UT 84121

Certified Mail # 760011180000000000

James Bruce Klingbiel
6912 West 4065 South
West Valley City, UT 84120

Certified Mail # 70061010700000000000

Michael Anthony Espinoza
658 East 300 West
Spanish Fork, UT 84660

Certified Mail # 76264 2240

Executive Secretary